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July 31, 2006

DEPARTMENT OF ENERGY
OFFICE OF HEARINGS AND APPEALS

Hearing Officer's Decision

Name of Case: Personnel Security Hearing

Date of Filing: December 27, 2005

Case Number: TSO-0257

This Decision concerns the eligibility of XXXXXXXX (hereinafter referred to as "the individual") for access authorization under the regulations set forth at 10 C.F.R. Part 710, entitled "Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material." ¹ The individual's employer, a Department of Energy (DOE) contractor, requested a clearance for the individual. For the reasons set forth below, I conclude that the individual should not be granted access authorization at this time.

I. BACKGROUND

In response to his employer's request for a security clearance, the local DOE security office conducted an investigation of the individual. As a part of this investigation, the individual completed a Questionnaire for National Security Positions (QNSP) in 2002 and was interviewed by a personnel security specialist in 2003. After this Personnel Security Interview (PSI), the individual was referred to a local psychiatrist for a DOE-sponsored evaluation. The psychiatrist (hereinafter referred to as "the DOE psychiatrist") subsequently submitted a written report to the local security office setting forth the results of that evaluation.

After reviewing the information generated by its investigation, the local security office determined that derogatory information existed that cast into doubt the individual's eligibility for a security clearance. They informed the individual of this determination in a letter that set forth in detail the DOE's security concerns and the reasons for those concerns. I will hereinafter refer to this letter as the Notification Letter. The Notification Letter also informed the individual that he was entitled to a hearing before a Hearing Officer in order to resolve the substantial doubt concerning his eligibility for access authorization.

The individual requested a hearing on this matter. The local security office forwarded this request to the Office of Hearings and Appeals and I was appointed the Hearing Officer. The DOE introduced

¹An access authorization is an administrative determination that an individual is eligible for access to classified matter or special nuclear material. 10 C.F.R. § 710.5. Such authorization will be referred to in this Decision as access authorization or a security clearance.

24 exhibits into the record of this proceeding and presented the testimony of the DOE psychiatrist at the hearing. The individual submitted one exhibit and presented the testimony of four witnesses, in addition to himself.

II. THE NOTIFICATION LETTER

As indicated above, the Notification Letter included a statement of derogatory information that created a substantial doubt as to the individual's eligibility to hold a security clearance. This information pertains to paragraphs (h), (j), (k) and (l) of the criteria for eligibility for access to classified matter or special nuclear material set forth at 10 C.F.R. § 710.8.

Under paragraph (j), the DOE alleges that the individual "has been, or is a user of alcohol habitually to excess, or has been diagnosed by a psychiatrist as alcohol dependent or as suffering from alcohol abuse." As support for this paragraph, the Letter cites the DOE psychiatrist's evaluation, in which he concludes that the individual suffers from Substance Dependence, Alcohol, with Physiological Dependence, and that there is inadequate evidence of reformation or rehabilitation. In the Letter, the DOE further alleges that the individual had seven alcohol-related arrests, including four DWIs, during the period from 1981 through 1998.

Under paragraph (k), information is derogatory if it indicates that the individual has "sold, transferred, possessed, used, or experimented with a . . . substance listed in the Schedule of Controlled Substances established pursuant to section 202 of the Controlled Substances Act of 1970 (such as marijuana, cocaine, amphetamines, . . . etc.)" except as prescribed by a physician or otherwise authorized by federal law. With regard to this paragraph, the Letter states that the individual admitted during PSIs conducted in 1992 and 2003, and during his 2004 psychiatric evaluation that he used marijuana on a weekly basis from 1978 to 1985 and on approximately eight occasions since 1985, including two usages in the year leading up to his 2004 evaluation. The individual also admitted that since 1978, he has used hashish and psychoactive mushrooms on approximately three occasions each and cocaine on four or five occasions, including three usages in the year prior to his 2004 evaluation.

The Letter also cites paragraph (h), which defines as derogatory information indicating that a clearance holder or applicant for access authorization suffers from an "illness or mental condition which, in the opinion of a psychiatrist . . . , causes or may cause, a significant defect in judgment or reliability." 10 C.F.R. § 710.8(h). Pursuant to this paragraph, the Letter refers to the DOE psychiatrist's evaluation. As previously stated, he concluded that the individual suffers from alcohol dependence with inadequate evidence of reformation or rehabilitation. The DOE psychiatrist also found that the individual suffers from Substance Abuse, Cocaine and Marijuana, with inadequate evidence of reformation or rehabilitation, and concluded that these illnesses could cause significant defects in the individual's judgment and reliability. DOE psychiatrist's report at 32 (DOE Exhibit 6).

Pursuant to paragraph (l), information is derogatory if it indicates that a current or prospective clearance holder "has engaged in any unusual conduct or is subject to any circumstances which tend to show that he is not honest, reliable, or trustworthy; or which furnishes reason to believe that he

may be subject to pressure, coercion, exploitation or duress which may cause him to act contrary to the best interests of the national security.” In support of this paragraph, the Letter states that during PSIs conducted in 1992 and 2003, the individual indicated that he did not intend to use illegal drugs in the future, and then later admitted that he used illegal drugs subsequent to both of these interviews. ²The Letter also cites the individual’s arrests in February 1985 for Criminal Damage to Property, Disorderly Conduct and Resisting Arrest and in December 1985 for Simple Assault and Disturbing the Peace, and his admissions during the 1992 and 2003 PSIs that he has physically abused his “co-habitant” and verbally abused some of his family members.

III. REGULATORY STANDARDS

The criteria for determining eligibility for security clearances set forth at 10 C.F.R. Part 710 dictate that in these proceedings, a Hearing Officer must undertake a careful review of all of the relevant facts and circumstances, and make a “common-sense judgment . . . after consideration of all relevant information.” 10 C.F.R. § 710.7(a). I must therefore consider all information, favorable or unfavorable, that has a bearing on the question of whether granting the individual a security clearance would compromise national security concerns. Specifically, the regulations compel me to consider the nature, extent, and seriousness of the individual’s conduct; the circumstances surrounding his conduct; the frequency and recency of the conduct; the age and maturity of the individual at the time of the conduct; the absence or presence of rehabilitation or reformation and other pertinent behavioral changes; the likelihood of continuation or recurrence of the conduct; and any other relevant and material factors. 10 C.F.R. § 710.7(c).

A DOE administrative proceeding under 10 C.F.R. Part 710 is “for the purpose of affording the individual an opportunity of supporting his eligibility for access authorization.” 10 C.F.R. § 710.21(b)(6). Once the DOE has made a showing of derogatory information raising security concerns, the burden is on the individual to produce evidence sufficient to convince the DOE that granting access authorization “will not endanger the common defense and security and will be clearly consistent with the national interest.” 10 C.F.R. § 710.27(d). *See Personnel Security Hearing*, Case No. VSO-0013, 24 DOE ¶ 82,752 at 85,511 (1995) (*affirmed* by OSA, 1996), and cases cited therein. The regulations further instruct me to resolve any doubts concerning the individual’s eligibility for a clearance in favor of the national security. 10 C.F.R. § 710.7(a).

IV. FINDINGS OF FACT AND ANALYSIS

After reviewing the entire record in this matter, I find that the DOE has made a proper showing of derogatory information raising legitimate security concerns under paragraphs (h), (j), (k) and (l) of the criteria for eligibility for access to classified matter or special nuclear material. At the hearing, the individual admitted that the information in the Notification Letter concerning domestic violence and his DWI arrests is accurate. Hearing Transcript (Tr.) at 62. Furthermore, the individual did not dispute the accuracy of his earlier statements concerning his usage of illegal drugs. This information formed the basis for the DOE’s invocation of paragraphs (k) and (l), and part of the factual basis cited in support of paragraph (j). Moreover, the DOE psychiatrist’s diagnoses, which were largely

² The 1992 PSI was conducted pursuant to an earlier request for a security clearance on the individual’s behalf by another DOE contractor.

unrebutted at the hearing, adequately support paragraph (h) and provide a further basis for the invocation of paragraphs (j) and (k).

At the hearing, the individual attempted to show, through his own testimony and that of his mother, his pastor and two supervisors, that he is an honest and reliable person who no longer suffers from alcohol dependence or marijuana or cocaine abuse. However, after weighing this testimony against the testimony of the DOE psychiatrist and the other information presented by the DOE, I conclude that the individual has failed to adequately address the security concerns raised in the Notification Letter.

A. PARAGRAPHS (H), (J) and (K)

At the hearing, the individual testified that in prior years, he had a drinking problem, Tr. at 66, 67, 70, but not as of the date of the hearing. Tr. at 73. During the period that he was drinking heavily, he indicated that he had driven “hundreds of times” after consuming three to four beers over a period of one to three hours. Tr. at 62-63. When asked whether he had ever drank more than this and then driven, he replied “In the past, yes. That’s where I got my DWIs. In the present, no.” Tr. at 63. During the period from 1992 to 1998, he said that he would, at times, drink nothing at all, and then at other times, drink anywhere from a 12-pack to a case of beer during a weekend. *Id.* For about a year after his son was murdered in 1998, he drank anywhere from seven or eight beers to almost a case of beer a day, becoming intoxicated every day. DOE psychiatrist’s report at 24, Tr. at 66. The individual eventually entered into a substance abuse treatment program, and reduced his consumption significantly. Tr. at 66. Until quitting alcohol approximately three months prior to the hearing, he was consuming an average of six to 12 beers per weekend. Tr. at 70. He testified that he intends to completely abstain from future alcohol and illegal drug use.

The individual has periodically received treatment for his alcohol dependence and substance abuse. He testified that in 2000, he participated in weekly counseling sessions for approximately 10 weeks, during which he addressed issues regarding the loss of his son and his alcohol and drug usage. Tr. at 67. He also attended Alcoholics Anonymous (AA) on a weekly basis for approximately three months, while continuing to consume alcohol. Tr. at 68-69. He returned to AA approximately one year ago, attending two meetings a week for three months. Again, however, he continued to drink. Tr. at 69. Finally, in September 2005, he completed a four week outpatient program at a local facility. Individual’s Exhibit A. He testified that he has not consumed alcohol since then and has not used illegal drugs for approximately one year. Tr. at 74, 79.

After observing the testimony of the individual and all of his witnesses, the DOE psychiatrist testified. He initially observed that he had previously evaluated the individual in 1992 for the DOE, and had concluded that he suffered from “alcohol dependence, severe and active.” Tr. at 87. The DOE psychiatrist then discussed his 2004 evaluation of the individual, stating that during the early ‘90s, he met three of the seven criteria for alcohol dependence and that in 2000, the individual satisfied five of these criteria.³ Tr. at 90. He added that the individual was still drinking at the time

³ As set forth in the Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition, Text Revision. The DOE psychiatrist testified that the presence of three of these criteria during a 12 month period is needed for a diagnosis of Substance Dependence, Alcohol. Tr. at 90.

of the 2004 evaluation. *Id.* The DOE psychiatrist further concluded that the individual was a user of alcohol habitually to excess “from at least the 1970s to 1992, and then again from 1998 to 2000, . . . and . . . when I evaluated him in 2004.” Tr. at 91. At that time, he opined that, in order to show adequate evidence of rehabilitation or reformation, the individual would have to (i) produce evidence of attendance at AA for a minimum of 100 hours, with a sponsor, at least once a week for a minimum of one year, and then be completely abstinent from alcohol and all illegal drugs for an additional year, or (ii) complete a professionally-run substance abuse program and then be abstinent for one and one-half years after the conclusion of that program, or (iii) if no therapy is obtained, be completely abstinent from alcohol and illegal drugs for three years. Tr. at 93-94.

The DOE psychiatrist further testified that his diagnoses of Substance Abuse, Marijuana and Cocaine, were based on the individual’s repeated usages of those drugs while employed by a DOE contractor, despite that contractor’s policy prohibiting illegal drug use by its employees. Tr. at 96. The DOE psychiatrist’s recommendations for rehabilitation or reformation from marijuana and cocaine abuse were identical to those that he made for alcohol dependence. Tr. at 98.

After considering all of the evidence produced by the individual, the DOE psychiatrist concluded that he was still not exhibiting adequate evidence of rehabilitation or reformation from either alcohol dependence or substance abuse. Specifically, he found that the individual had not been abstinent from alcohol or illegal drugs for a sufficient period of time to prove reformation or rehabilitation. Tr. at 95, 98-99.

I agree with the DOE psychiatrist that the individual is not demonstrating adequate evidence of reformation or rehabilitation. Like the DOE psychiatrist, I find the individual’s three month period of abstinence to be insufficient to demonstrate a long-term commitment to sobriety. Moreover, I am concerned about the apparent absence of an after-care component to the drug and alcohol program that the individual participated in in September 2005. Despite the individual’s long-standing problems with alcohol dependence and his relatively short period of abstinence, the individual is currently not participating in AA or any other substance abuse program. Tr. at 82. Finally, I am not convinced that the individual fully appreciates the gravity of his condition. When asked at the hearing if he felt he currently had “an alcohol problem,” he replied in the negative. Tr. at 73. While this answer could be based on his three months of abstinence, his failure to seek ongoing treatment and his somewhat equivocal response concerning whether he had *ever* had an alcohol problem lead me to believe that he is underestimating the tenacity of his alcohol dependence.⁴ For these reasons, I conclude that the DOE’s security concerns under paragraphs (h), (j) and (k) remain unresolved.

B. PARAGRAPH (L)

Much of the testimony provided at the hearing by the individual’s witnesses focused on the individual’s character and honesty. Essentially, they testified that he is a reliable and trustworthy

⁴ Despite having been diagnosed as alcohol dependent on at least two occasions, when asked whether he felt he had ever had an alcohol problem, the individual replied, “I wouldn’t say I’ve had an alcohol problem, but I’d say the alcohol has . . . been a problem in my life, yes.” Tr. at 73.

person who will often go out of his way to help others. Tr. at 9-59. In general, I found this testimony to be credible and entitled to some weight. Moreover, although I cannot ignore the incidents of dishonest or illegal behavior cited in the Notification Letter, I note that all of them were either preceded by, or connected to, the individual's usage of alcohol and illegal drugs. It therefore appears that the individual's behavior, judgement and reliability tend to deteriorate significantly after drug or alcohol use. Consequently, I am concerned that if the individual resumes using alcohol or illegal drugs, he will be prone to further acts of illegality or dishonesty, and for the reasons set forth in section A. above, I conclude that his chances of suffering a relapse are unacceptably high. I find that the individual has failed to adequately address the DOE's security concerns under paragraph (l).

V. CONCLUSION

Based on the factors discussed above, I find that the individual has failed to adequately address the security concerns set forth in the Notification Letter. Accordingly, I conclude that he has not demonstrated that granting him a clearance would not endanger the common defense and would be clearly consistent with the national interest. Accordingly, the individual should not be granted access authorization at this time. The individual may seek review of this Decision by an Appeal Panel under the procedures set forth at 10 C.F.R. § 710.28.

Robert B. Palmer
Hearing Officer
Office of Hearings and Appeals

Date: July 31, 2006